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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,882	02/27/2002	Makoto Suzuki	132578-00014	7768

7590                    06/21/2004

Arnold B. Silverman  
Eckert Seamans Cherin & Mellott, LLC  
44th Floor  
600 Grant Street  
Pittsburgh, PA 15219

EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/085,882	SUZUKI ET AL.
	Examiner Drew E Becker	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 April 2002.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                   |                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                                   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,544,569 in view of JP 2000-197456. It would have been obvious to one of ordinary skill in the art to incorporate the triangular pieces of JP 2000-197456 since this would have a convenient means for opening the package.

3. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/353,680 in view of JP 2000-197456. It would have been obvious to one of ordinary skill in the art to incorporate the triangular pieces of JP 2000-197456 since this would have a convenient means for opening the package.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 1 and 6 recite "its". It is not clear what "it" is.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 1-2 and 6 are rejected under 35 U.S.C. 102(a) as being anticipated by JP 2000-197456.

JP 2000-197456 teach a conical sushi package comprising a conical mass of rice (Figure 4, #51), an outer film (Figure 1, #1), an inner film (Figure 1, #2), a sheet of food between the films (Figure 1, #3), the films being heat sealed lines (paragraph 0006; Figure 2), triangular pieces (Figure 1, #12 & 22), rectangular pieces (Figure 1, #11 & 21), and a separable lap with weak adhesion (Figure 1, #13; paragraph 0008).

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000-197456.

JP 2000-197456 teaches the above mentioned components. JP 2000-197456 does not mention heat seal lines along the lap and both triangular pieces being on the inner side of the lap. It would have been obvious to one of ordinary skill in the art to provide heat seal lines in the laps since the laps were already sealed via heat seals (paragraph 0006-8), since lines of heat seals were already used by JP 2000-197456 (Figure 2), and since a line of heat seals would help prevent accidental separation due to one of the "spots" (Figure 1, #13) coming loose. It would have been obvious to one of ordinary skill in the art to place both triangular pieces on the inner side of the lap since one of the triangular pieces was already in this position (Figure 3, #12) and since this would have been done during the course of normal experimentation and optimization.

11. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000-197456 as applied above, in view of Suzuki [Pat. No. 4,623,568].

JP 2000-197456 teaches the above mentioned components. JP 2000-197456 does not mention incisions. Suzuki teaches a sushi package comprising incisions (Figures 1, #7). It would have been obvious to one of ordinary skill in the art to incorporate the incisions

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of Suzuki into the invention of JP 2000-197456 since both are directed to sushi packages, since JP 2000-197456 already included a separable seal (Figure 1, #13; paragraph 0008), and since the incisions of Suzuki would have provided a more convenient and effective means of opening (column 1, lines 55-68).

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tezuka [Pat. No. 4,230,728], Ikeda [Pat. No. 4,784,864], Suzuki et al [Pat. No. 6,544,569], JP 410215832A, and JP 2000-264387A teach sushi packages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Drew Becker*

Drew E Becker  
Primary Examiner  
Art Unit 1761

*6/17-09*